

Appeal from a decision of the Utah State Office, Bureau of Land Management, declaring seven unpatented mining claims abandoned and void for failure to file evidence of assessment work or notice of intention to hold the claims on or before December 30, 1990. UMC-131063 through UMC-131068; UMC-131073.

Reversed and remanded.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Abandonment--Mining Claims: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim

Failure to file in the proper Bureau of Land Management office either evidence of assessment work performed or notice of intention to hold as required by 43 U.S.C. § 1744 (1988), and 43 CFR 3833.2 within the time period prescribed results in a conclusive presumption of abandonment of the mining claim.

2. Evidence: Presumptions--Evidence: Sufficiency--Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Rules of Practice: Evidence

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced documents filed with them is rebuttable by probative evidence to the contrary. The presumption is rebutted where the mining claimant provides copies of affidavits of assessment work timely filed with BLM for 45 claims, a copy of a document filed with BLM stating that evidence of assessment work for 52 claims was being filed along with \$260, and a "Receipt and Accounting Advice" acknowledging receipt of that amount of money, and BLM has not refunded any of that money. Such evidence corroborates the assertion that timely evidence of assessment work was filed for all 52 claims.

APPEARANCES: Robert G. Pruitt III, Esq., Salt Lake City, Utah.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

Silver King Mining Company (Silver King) has appealed from a decision of the Utah State Office, Bureau of Land Management (BLM), dated April 12, 1991, declaring the Hoover Nos. 1-6 mining claims (UMC-131063 through UMC-131068) and the Contact No. 4 claim (UMC-1310673) abandoned and void for failure to file evidence of assessment work performed or notice of intention to hold the claims during the filing period ending December 30, 1990. Previously, on February 28, 1991, BLM issued a decision declaring the claims abandoned and void for the same reason. However, that decision provided Silver King with a 30-day compliance period, stating:

You have 30 days from the date of receipt of this letter to submit information that documents were timely filed, i.e., documents showing the BLM receiving date stamp for the year in question, or you may appeal this decision. If the information is not received within the specified timeframe, the subject mining claim(s) is/are declared abandoned and void without further notice.

At the end of 30 days this decision will become final and you will have an additional 30 days in which you may appeal to the Interior Board of Land Appeals.

By letter dated March 25, 1991, Silver King responded asserting a "misunderstanding" and attaching certain documentation, including a copy of "Receipt and Accounting Advice" No. 165417, dated October 9, 1990, showing receipt of \$260 from Silver King. Silver King alleged that at \$5 per claim that amount covered a total of 52 claims, the number that it intended to "renew." Silver King also included a copy of an affidavit of assessment work for the seven claims in question that bears a county date stamp of October 10, 1990, but not a BLM date stamp. <sup>1/</sup> Four other documents were filed by Silver King. Copies of two "Affidavit[s] of Work Done," bearing BLM date stamps of October 9, 1990, referencing claims listed in attached Exhibits A and B, respectively. And copies of Exhibits A and B, listed 36 claims in Uintah Mining District, Summit County, Utah, and 9

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<sup>1/</sup> That affidavit actually relates to the Hoover Nos. 1-6 claims, as well as another mining claim designated the Hoover No. 4, which on previous affidavits of assessment work performed was named the Contact No. 4 claim. Identification of that claim only as the "Hoover No. 4" would not be adequate to satisfy the filing requirements of 43 U.S.C. § 1744(a) (1988), requiring a description of the location of the mining claim sufficient to locate the claimed land on the ground. See Arley Taylor, 90 IBLA 313, 314 (1986). However, the affidavit included a reference to further information (i.e., the book and page number of the county recordation) which, when compared to previous affidavits of assessment work in the case file, show the claim to be the Contact No. 4. Under the circumstances, the affidavit contained sufficient identification.

claims in the Big Cottonwood Mining District, Salt Lake County, Utah, respectively. The nine claims also appear on Exhibit A. 2/

On April 12, 1991, BLM issued the decision under review stating that the affidavit of assessment work for the seven claims in question "did not show a Utah State Office BLM date stamp for the year questioned," and that the information submitted by Silver King was not sufficient to demonstrate timely filing. Accordingly, BLM declared the claims abandoned and void.

In its SOR, Silver King claims that it has presented "sufficient evidence to maintain its rights to the Hoover Nos. 1-6 and Contract No. 4 mining claims" (SOR at 1). Silver King bases its argument on the fact that it submitted \$260 to cover filing fees for a total of 52 claims, and that the affidavits for the 45 claims listed on Schedules A and B are date-stamped by BLM. According to Silver King, "[t]he time stamped receipt for payment, together with the other filings submitted, represent evidence of timely filing with the BLM sufficient to rebut the presumption that BLM did not misfile the Affidavit of Labor for the seven (7) subject claims" (SOR at 3). Silver King urges this Board to "hold that a preponderance of the evidence in the present case supports a finding that all required documents were indeed timely filed" (SOR at 8).

[1] Section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1988), and 43 CFR 3833.2-2 require the owner of an unpatented mining claim located on public land to file evidence of assessment work performed or a notice of intention to hold the mining claim with the proper BLM office prior to December 31 of each year following the year in which the claim is located. Failure to file one of the two instruments within the prescribed time period conclusively constitutes an abandonment of the mining claim. 43 U.S.C. § 1744(c) (1988); 43 CFR 3833.4.

Filing or recording the required documents with the local recording office alone does not constitute compliance with the requirement that they be filed with BLM. Fern L. Evans, 88 IBLA 45 (1985). Thus, a claimant challenging a determination of abandonment has the burden of presenting evidence of timely filing with BLM.

[2] All else appearing regular, administrative officials are presumed to have properly discharged their duties and not lost or misplaced legally significant documents submitted for filing. H. S. Rademacher, 58 IBLA 152, 88 I.D. 873 (1981). This presumption of regularity is not overcome by an uncorroborated statement that the document was submitted to BLM or by evidence that the claimant timely filed it with the local recording office. Ruth Irene Hackathorn, 94 IBLA 194 (1986); John R. Wellborn, 87 IBLA 20

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2/ In its statement of reasons (SOR), Silver King explains that the nine mining claims referred to in Schedule B "straddle the Salt Lake/Summit County line, and for those claims an affidavit of labor was filed in both Salt Lake and Summit County," and that duplicate filings were made with BLM for those nine claims.

(1985). To overcome the presumption of regularity, an appellant must present evidence which establishes that it is "more probable than not" that the missing document was timely filed. James L. Gleave, 112 IBLA 281, 285 (1990).

In this case, we believe Silver King has rebutted the presumption with probative evidence. Timely filing is evidenced by the "Receipt and Accounting Advice," BLM date-stamped affidavits for 45 of the 52 claims, and a document submitted by Silver King on appeal which is a copy of a document submitted to BLM bearing a stamp reading "10/09/90 2:46PM P/L \$260.00." 3/ That document states:

ASSESSMENT WORK  
LEAD UMC NO. 128748, et al [4/]  
NO. CLAIMS 52  
X \$5. EACH =  
TOTAL \$ 260.00

This is evidence which corroborates the filing of the affidavit of assessment work for the seven claims. 5/ The document quoted above notified BLM that Silver King was filing notice of assessment work performed for 52 claims and the "Receipt and Accounting Advice" acknowledged receipt of \$260, the amount of money necessary for such filing. See Donald G. Sterner, 109 IBLA 76, 78 (1989); Alice R. Kirk, 88 IBLA 4 (1985); Paul E. Hammond, 87 IBLA 139 (1985). Counsel for Silver King additionally asserts that BLM continues to hold the fees for 52 claims, and we find no evidence in the record that indicates that BLM refunded any of those fees to Silver King as excess of the amount paid for the proofs of labor actually filed. 6/

3/ We assume that "P/L" means "proof of labor."

4/ UMC No. 128748 is the mining claim recordation number for the Mars claim, the first claim listed on Exhibit A.

5/ This case is distinguishable from H. S. Rademacher, *supra*. In that case, BLM declared certain mining claims abandoned and void for failure to file the required evidence of assessment work. The appellant alleged that he had enclosed two recorded proofs of labor, along with required notices of location and recording fees, in an envelope addressed to BLM. BLM received the notices of location and the recording fees for those notices, but not the proofs of labor. The Board found that because the cover letter submitted by the appellant with the notices of location mentioned only the service fees and not the proofs of labor, the presumption had not been rebutted. Here, the document submitted on appeal, in essence, constituted a cover letter in that it indicated that evidence of assessment work for 52 claims was enclosed along with the fees to cover such filing. Silver King has established that two of the three affidavits of labor were received by BLM and that BLM retained the fees for all the claims. Such evidence rebuts the presumption.

6/ Mere acceptance of filing fees and issuance of a "Receipt and Accounting Advice" would not go toward overcoming the presumption, if BLM were, within a reasonable time, to refund fees to a mining claimant indicating

While there may still be some doubt whether the affidavit of labor for the seven claims in question was timely filed, we hold that a preponderance of the evidence presently before us supports a finding that the required document was, in fact, timely filed. See L. E. Garrison, 52 IBLA 131, 133 (1981).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed and the case remanded to BLM.

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Bruce R. Harris  
Deputy Chief Administrative Judge

I concur:

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James L. Burski  
Administrative Judge

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fn. 6 (continued)  
that affidavits of assessment work or notices of intention to hold had not been filed in support of the fees submitted.

